

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

Daniel Rosario-González

## Plaintiffs

V.

## Servicios de Salud en el Hogar y Hospicio San Lucas, Inc.

**Defendant**

CIVIL NO. 08-2213 (GAG)

## ORDER

The court hereby adopts Magistrate-Judge Vélez-Rivé's Report and Recommendation (Dkt. 107). The Veteran's Administration cannot be sued before this court at this time, given that plaintiff's administrative claims are presently pending before the federal agency. Plaintiff himself acknowledges in his opposition to the Report and Recommendation (Dkt. 108) that he is not bringing any claims against the Veterans Administration, but rather, only against Hospital San Lucas. ¶¶ 19, 20.

Diversity of jurisdiction does not exist in this case between plaintiff and Hospital San Lucas. Plaintiff, however, again characterizes his cause of action, as one arising under the Constitution and laws of the United States. Notwithstanding, his own allegations belie this. For example, in his Objection (Dkt. 108 ¶¶ 11-16), plaintiff characterizes Hospital San Lucas' lack of medical care as negligent and intentional. This unmistakably sounds in tort. More so, a plaintiff cannot convert a state-law tort cause of action into a federal civil/rights action by simply labeling it as such.

Accordingly, this Court hereby DISMISSES this action without prejudice. Plaintiff is free to file his claim against Hospital San Lucas in the Commonwealth Court of First Instance. Also, plaintiff's Federal Tort Claims Act claims may be filed in this court once the same are administratively disposed by the Veterans Administration. Upon a proper basis for federal jurisdiction, plaintiff may re-assert his claims against Hospital San Lucas as supplemental claims before this court.

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2 Civil 08-2213 (GAG)  
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2 Plaintiff is highly encouraged to retain an attorney — given that prosecution of this case  
3 involves technical procedural matters, and statute of limitations and jurisdictional issues as well.

4 **SO ORDERED.**

5 In San Juan, Puerto Rico this 22<sup>nd</sup> day of April, 2009.  
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7 *S/Gustavo A. Gelpí*  
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10 GUSTAVO A. GELPI  
11 United States District Judge  
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